IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Tilok Dan. Versus State of Rajasthan & ors.

S.B. Criminal Misc. Petition No. 7/2005
against the order dated 15-12-2004 passed
by the Additional Sessions Judge, Barmer, in
Criminal Revision No. 12/2002.

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Date of Order: September 12, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr.P.N. Mohanani, for the petitioner.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.
Mr. Pradeep Shah, for the non-petitioner No.2.

BY THE COURT:

The order dated 15-12-2004 passed by the Additional Sessions Judge, Barmer (for short, "the Revisional Court" hereinafter) passed by Criminal Revision No. 12/2002 has been challenged by the petitioner by filing the instant criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter), whereby the order dated 5-12-2002 passed by the Sub-Divisional Magistrate, Gudamalani, district Barmer (for short, "the Executive Magistrate" hereinafter) was affirmed and the revision petition against the said order was dismissed.

On the proceedings initiated under Sections 145 and 146 of the Code between party No.1, the non-petitioner No.2 herein, and the party No.2, the petitioner herein, the Executive Magistrate issued notice to the party No.1and party No.2 calling upon them to appear before the Court in person or by pleader and put in the written statements of their respective claim in respect of the fact of actual possession of the subject matter. Both the parties filed their respective written statement and the claim and thereafter the Executive Magistrate recorded the statements of the witnesses produced by the parties under sub-section (4) of Section 145of the Court and by the order dated 5.10.2002, declared party No.1, who is non-petitioner No.2 herein, in possession of the subject matter of dispute under proviso to sub-section (4) of Section 145 of the Code which provides that if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under sub-section (1), he may treat the party so dispossessed as if that party had been in possession on the date of his order under sub-section (1).

On careful perusal of the statements of witnesses recorded by the Executive Magistrate and available on the record of the Court of Executive Magistrate, in my view, the conclusion

arrived at by the Executive Magistrate is just and proper. There is a clear evidence on record that the party No.2., petitioner herein, forcibly and wrongfully dispossessed the party No.1, the non-petitioner No.2 herein, on 8-7-1990 within two months prior to the date of preliminary order under sub-section (1) of Section 145 of the Code was made by the Executive Magistrate. In the instant case, the Executive Magistrate made the preliminary order under sub-section (1) of Section 145 of the Code on 14.7.1990, almost within a week from the date of forcible and wrongful dispossession of the non-petitioner No.2, i.e. party No.1.

Learned counsel for the petitioner has relied on a decision of th Hon'ble Supreme Court in Lophinoris Shangpling & ors. Vs. Hamboy Shullai & Anr., 2001 Cri. L.J. 2943. The decision relied on by the learned counsel for the petitioner is of no help for the reason that in that case the respondent therein had admitted and stated that it is a fact that on 26-8-1997, he no longer stay at Jaiaw Pdeng within the disputed land. In that case, the preliminary order under sub-section (1) of Section 145 of the Code was passed by the Executive Magistrate on 9-7-1998 whereas the respondent admitted that he had vacated the disputed property on 26-8-1997, almost nearly one year ago and, therefore, it was not a case that he was dispossessed within two months from the date of passing the preliminary order under

sub-section (1) of Section 145 of the Code.

In this view of the matter, it cannot be said that the impugned order would result in serious miscarriage of justice or abuse of process of the Court. On the contrary, the conclusion arrived at by the Executive Magistrate is based on sound and proper appreciation of the evidence, as also in accordance with law. The Revisional Court, on examination of the record, concurred with the finding arrived at by the Executive Magistrate and, therefore, there is concurrent findings of fact recorded by the two court below. In my view, no ground to interfere in the inherent jurisdiction under Section 482 of the Code is made out. It is settled law that the powers under Section 482 of the Code are to be exercised very sparingly and in exceptional cases where it is brought before the Court that non-interference would result in serious miscarriage of justice or abuse of process of the Court. The case in hand is not of that nature.

In the circumstances, therefore, I do not find any merit in the criminal miscellaneous petition and the same is dismissed accordingly. The stay petition also stands dismissed.

(H.R. PANWAR), J.

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